Kuantan Beach Hotel Sdn Bhd (berniaga sebagai Hyatt Regency Kuantan) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R1–24–02 OF 2003
RAUS SHARIF J
31 DECEMBER 2003

Labour Law — Industrial action — Picketing in employer's premises — Whether different from strikes — Industrial Relations Act 1967 ss 40, 44 and 45

Labour Law — Trade union — Dispute — Whether complaint for non-compliance regarding non-payment of annual bonus a trade dispute — Jurisdiction of civil courts — Whether High Court seized with jurisdiction to hear matter — Industrial Relations Act 1967 s 21

The plaintiff and the defendant were bound by a collective agreement that was registered in the Industrial Court pursuant to s 16 of the Industrial Relations Act 1967 ('the Act') and given cognizance. Subsequently, the defendant lodged a complaint under s 56(1) of the Act for non-compliance at the Industrial Court in relation to with respect to art 27 of the collective agreement on the contractual annual increments of the defendant's members. The plaintiff offered to pay their contractual bonus provided that they forego the annual increment claim. The defendant rejected the offer and requested the plaintiff to pay the contractual annual bonus for the year 2000, failing which the defendant would proceed hold a picket. The plaintiff obtained an interim order to restrain the defendant from picketing at or near the vicinity of the plaintiff's hotel. As a result the proposed picketing did not materialise. The defendant applied to this court to set aside the restraining order, pursuant to O 18 r 19(1)(b) and (d) of the Rules of the High Court 1980.

Held, allowing the defendant's application:

(1) Picketing is sanctioned by s 40 of the Act as long as it is "in furtherance of a trade dispute". Section 2 defines a trade dispute as being a dispute between an employer and their workmen connected with the employment or non-employment, or the terms of employment or the conditions of work of any such workmen (see para 17).

(2) The defendant's claim for contractual annual bonus, failing which picketing would be held, falls within the meaning of trade dispute as it relates to terms of employment of the plaintiff's workmen. Section 21 of the Act is applicable and this court has no jurisdiction to entertain the plaintiff's action, which ought to be struck out for being frivolous, scandalous, or vexatious and otherwise an abuse of the process of the court (see paras 18 and 19).

(3) Strike and picketing are two different things. The right to picket is clearly preserved in s 40 of the Act which sets out the circumstances where

picketing is allowed. The use of the two different terms within the same statute indicates that Parliament intended them to relate to different matters. As such, ss 44 and 45 of the Act which relates to strike were not applicable in this case (see para 21).

[**Bahasa Malaysia summary**

Plaintif dan defendan terikat dengan suatu perjanjian bersama yang telah didaftarkan di Mahkamah Perusahaan melalui s 16 Akta Perhubungan Perusahaan 1967 ('Akta') dan diberi pengiktirafan. Kemudiannya, defendan telah memajukan aduan di bawah s 56(1) Akta untuk ketidakpatuhan di Mahkamah Perusahaan berkenaan dengan art 27 perjanjian bersama berkenaan dengan kenaikan gaji tahunan kontraktual ahli-ahlinya. Plaintif telah menawar untuk membayar mereka bonus tahunan kontraktual sekiranya mereka mengabaikan tuntutan kenaikan gaji tahunan berkenaan. Defendan menolak tawaran tersebut dan meminta plaintif membayar bonus tahunan kontraktual untuk tahun 2000, dan mengumumkannya bahawa defendan akan mengadakan piket sekiranya pembayaran tersebut tidak dibuat. Plaintif telah mendapatkan suatu perintah interim untuk menghalang defendan daripada mengadakan piket pada atau berhampiran dengan kawasan hotel plaintif. Akibatnya, usul piket tidak menjadi kenyataan. Defendan telah memohon ke mahkamah ini untuk mengetepikan perintah halangan tersebut, melalui A 18 k 19(1)(b) dan (d) Kaedah-kaedah Mahkamah Tinggi 1980.

Diputuskan, membenarkan permohonan defendan:

(1) Perbuatan mengadakan piket dibenarkan di bawah s 40 Akta selagi ia "diperlakukan di bawah suatu pertikaian perdagangan'. Seksyen 2 mentafsirkan suatu pertikaian perdagangan sebagai suatu pertikaian diantara majikan dan pekerjanya yang berkaitan dengan pekerjaan atau tidak, atau terma-terma perkhidmatan atau syarat-syarat pekerjaan mana-mana pekerja (lihat perenggan 17).

(2) Tuntutan defendan untuk bayaran bonus tahunan kontraktual, di mana kegagalannya akan menyebabkan suatu piket diadakan, termasuk di bawah erti kata suatu pertikaian perdagangan kerana ia merujuk kepada terma-terma pekerjaan pekerja plaintif. Seksyen 21 Akta terpakai dan mahkamah ini tidak mempunyai bidang kuasa untuk membicarakan tindakan plaintif, yang harus dibatalkan atas alasan-alasan ia adalah remeh dan menyusahkan, dan juga suatu penyalahgunaan proses mahkamah (lihat perenggan 18 dan 19).

(3) Mogok atau mengadakan piket adalah dua perkara yang berbeza. Hak untuk mengadakan piket termaktub di bawah s 40 yang memberikan keadaan di mana ia dibenarkan. Penggunaan dua terma yang berbeza tersebut di dalam Akta yang sama menunjukkan bahawa Parlimen menginginkannya merujuk kepada perkara yang berlainan. Oleh yang demikian, ss 44 dan 45 Akta yang berkaitan dengan mogok tidak terpakai di dalam kes ini (lihat perenggan 21).

Notes

For cases on strikes, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1235–1238 and 1535

For cases on picketing, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1234 and 1442

For pickets generally, see 17 *Halsbury's Laws of Malaysia* para [290.101]–[290.105]

For trade disputes generally, see 17 *Halsbury's Laws of Malaysia* paras [290.095]–[290.119]

Cases referred to

RCA Sdn Bhd v Pekerja-Pekerja RCA Sdn Bhd & Ors [1991] 1 MLJ 309 (folld)

Legislation referred to

Rules of the High Court 1980 O 18 r 19(1)(b), (d)
Industrial Relations Act 1967 ss 2, 16, 33(1), 40, 44, 45
Trade Unions Act 1959 ss 4, 21

LG Seah (Angeline Low with her) (Lobo & Associates) for the defendant
M Nagarajah (Janice Leo with him) (Shook Lin & Bok) for the plaintiff

Raus Sharif J:

INTRODUCTION

[1] This is an application by the Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia ('the defendant') to strike out the action of Kuantan Beach Hotel Sdn Bhd (conducting its business as Hyatt Regency Kuantan) ('the plaintiff') and to set aside the injunction order made against the defendant restraining the defendant, its members/agents/servants from picketing at or near the vicinity of the plaintiff's hotel as indicated by the defendant.

BACKGROUND FACTS

[2] The plaintiff and the defendant were at all material times bound by a collective agreement that was registered in the Industrial Court pursuant to the provisions of s 16 of the Industrial Relations Act 1967 ('the Act') and given cognizance No 21/01 by the Industrial Court. The collective agreement was for the period 1 January 1999 to 31 December 2001 and thereafter.

[3] On 18 December, 2002, the defendant lodged a complaint of non-compliance at the Industrial Court pursuant to s 56(1) of the Act. The matter was recorded as Industrial Court case No 1/1–089/02 ('non-compliance complaint'). The non-compliance complaint was with respect to art 27 of the collective agreement on the contractual annual increments of the defendant's members.

[4] On 9 January 2003, the plaintiff offered to pay the defendant members their contractual annual bonus provided that they forego their contractual claim for annual increments which is the subject matter of the non-compliance complaint.

[5] By a letter dated 17 January 2003, the defendant rejected the plaintiff's offer and requested the plaintiff to pay the defendant's members their contractual annual bonus for the year 2000 by 30 January 2003, failing which it will have no alternative but to hold picketing actions on 31 January 2003.

[6] On 21 January 2003, the plaintiff filed for an application for interpretation of the collective agreement with the Industrial Court pursuant to s 33(1) of the Act. In the interpretation application, the plaintiff sought the Industrial Court's interpretation of art 2(1) and/or 2(3) of the collective agreement, in particular, whether on a proper interpretation of the said articles, the collective agreement is still in force.

[7] By a letter dated 23 January 2003, the plaintiff inter alia alleged that the proposed picketing will be unlawful.

[8] On 24 January 2003, the plaintiff filed the originating summons (encl 1) and the plaintiff's *ex parte* summons-in-chambers (encl 3) primarily to restrain the defendant, its members agents/servants from picketing at or near the vicinity of the plaintiff's hotel as indicated by the defendant.

[9] By a letter dated 28 January 2003, the defendant informed the plaintiff that the proposed picketing is lawful and will proceed to picket as scheduled if the plaintiff failed to pay the defendant's members their contractual annual bonus.

[10] On 30 January 2003 the plaintiff's *ex parte* application was heard and an interim order was granted by Abdul Hamid Said J restraining the defendant, its members/agents/servants from, picketing at or near the vicinity of the plaintiff's hotel as indicated by the defendant.

[11] In view of the said interim order, the proposed picketing did not materialise. Hence, on 10 February 2003, the defendant filed the defendant's summons-in-chambers (encl 8) to strike out the plaintiff's originating summons, the plaintiff's *ex parte* summons-in-chambers and the said interim order.

GROUNDS OF THE APPLICATION

[12] The defendant's application is made pursuant to O 18 r 19(1)(b) and (d) of the Rules of the High Court 1980. It is submitted on behalf of the defendant that the plaintiff's action is misconceived, scandalous, frivolous or vexatious and otherwise an abuse of the process of the court on the following grounds:

(i) Section 21 of the Trade Unions Act 1959 ('TUA') prohibits the plaintiff's action;

(ii) the principle enunciated in the then Supreme Court's decision of *RCA Sdn Bhd v Pekerja-Pekerja RCA Sdn Bhd & Ors* [1991] 1 MLJ 309

('*RCA*'s case') precludes the plaintiff from seeking the relief from this court;

(iii) there are material misrepresentation and non-disclosure of facts in the plaintiff's affidavits.

FINDINGS

Section 21 of TUA

[13] It is the submission of the defendant that s 4 of TUA prohibits the plaintiff from bringing the present suit against the defendant. Section 21 of TUA provides as follows:

> No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or in furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills.

[14] However, learned counsel for the plaintiff submitted that s 21 of the Act does not provide a trade union with complete immunity against all civil actions, but only in relation to specific claims:

(a) an action for inducement to break a contact of employment;

(b) an action for interference with the trade, business or employment of another; or

(c) an action for interference with right to dispose of capital or labour at will.

[15] According to learned counsel, in the present case, the plaintiff was seeking a declaratory relief and pending the outcome, the plaintiff applied for a *quia timet* injunction in order to preserve the status quo and thus, the specific immunity that is provided by s 21 is completely inapplicable. It is also submitted on behalf of the plaintiff, the form of industrial action, that is picketing intended to be carried out by the defendant is clearly prohibited by ss 44 and 45 of 1967 Act. This is because the defendant is merely claiming for non-payment of annual bonus under the collective agreement and thus the defendant is statutorily barred from carrying out the picketing and/or strike or any form of industrial action.

[16] With respect, I am unable to agree. The plaintiff's action stemmed from the defendant's letter dated 17 January 2003 (exh OKE4). In the said letter, the defendant requested that the plaintiff pay the defendant's members their contractual annual bonus which was already due. The defendant informed the plaintiff that if it failed to pay the contractual annual bonus by 30 January 2003, it will proceed to hold picketing actions to safeguard their interest.

[17] Picketing is sanctioned by s 40 of the 1967 Act as long as it is "in furtherance of a trade dispute". Trade dispute as defined in s 2 of the 1967 Act reads as follows:

> … any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the condition of work of any such workmen.

[18] I am of the view the request by the defendant that the plaintiff pay the defendant's members their contractual annual bonus, which was already due failing which it will proceed to hold picketing actions, squarely falls within the meaning of a trade dispute as it relates to term of employment of the plaintiff's workmen represented by the defendant's trade union. There was clearly trade dispute as the dispute relates to the terms of employment of the plaintiff's workmen and the defendant's act of issuing exh OKE4 was clearly in contemplation or in furtherance of a trade dispute. Thus, I am unable to agree with the plaintiff's contention that non-compliance of a collective agreement was not a trade dispute.

[19] Thus, I am of the view that s 21 TUA is applicable in the present action. There is an absence of jurisdiction for this court to entertain the plaintiff's action. For this reason alone the plaintiff's action ought to be struck out for being scandalous, frivolous or vexatious and otherwise an abuse of the process of the court.

[20] The learned counsel for the plaintiff in the course of the argument raised a noble issue in that picketing is a form of industrial action that forms part and parcel of a strike. Section 45 of the Act states, *inter alia*, that a strike shall be deemed illegal if it is in contravention of s 44 of the Act. Thus, it is the argument of the plaintiff that by virtue of s 45 of the Act, the defendant's intention to picket would have been deemed illegal.

[21] Again, I am unable to agree. To me strike and picketing are two different things. The right to picket is clearly preserved in s 40 which sets out the circumstances where picketing is allowed. The use of the two different terms within the same statue indicate that Parliament intended them to relate to different matters. Consequently, I am of the view ss 44 and 45 of the 1967 Act which relates to strike are not applicable to this case. The plaintiff's contention that 'picketing' and 'strike' are one and the same has no basis in law.

RCA's Case Principle

[22] It is contended by the defendant that since the 1967 Act creates a right and gives specific remedy to which the parties have already resorted to, the plaintiff is precluded from seeking relief from this court. The defendant refers to *RCA Sdn Bhd v Pekerja-Pekerja RCA Sdn Bhd & Ors* [1991] 1 MLJ 30 to support its proposition.

[23] The plaintiff however, submitted that the *RCA*'s case is not applicable and has no bearing on the plaintiff's application. This is because as argued by learned counsel that the plaintiff's application was for an order for declaration, and in the interim, for an injunction pending the preservation of status quo

until the disposal of the application for the declaratory orders. With respect, I am unable to agree. To me, the *RCA*'s principle is directly applicable to the present case. This is because the plaintiff had clearly resorted to the rights and remedy under the Act when it filed its application for the interpretation of the collective agreement even before it came to this court for a declaratory relief. Thus, the act in filing this action and obtaining an injunction against the defendant has therefore, acted in a scandalous, frivolous or vexatious manner and abused the process of this court.

Material Misrepresentation And Non-disclosure of Facts

[24] It is submitted by the defendant that the plaintiff had at paras 8, 9, 16, 24(1) and (b) of the plaintiff's first affidavit (encl 2) misrepresented to the court that the collective agreement has expired due to effusion of time and the plaintiff is therefore not bound to give the defendant's members their annual bonus. But, as a matter of fact, according to the defendant, at all material time the collective agreement is subsisting and remains in force and binding on the plaintiff and the defendant.

[25] The plaintiff argues that the defendant had never admitted that the said collective agreement is still substituting and accordingly not guilty of material misrepresentation and non disclosure of facts.

[26] I am in agreement with the plaintiff on this issue. On the facts there is no material misrepresentation and non-disclosure as alleged by the defendant.

[27] Nevertheless, in light of s 21 of TUA and the *RCA*'s case principle, it is my findings that the plaintiff's action is misconceived, scandalous, frivolous or vexatious and otherwise an abuse of the process of the court. I, therefore allowed the defendant's application and accordingly strike out the plaintiff's action and discharge the injunction with cost and damages be payable by the plaintiff to the defendant to be assessed by the deputy registrar.

Defendant's application to set aside plaintiff's interim injunction allowed with costs.

Reported by Ushah Kanapathipillai